



December 20, 1999

Mr. William T. Armstrong III  
Jeffers & Banack, Incorporated  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212-3166

OR99-3677

Dear Mr. Armstrong:

On behalf of the North East Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 130371.

The school district received a request for copies of eight items of information. You state that "[t]he District will provide for inspection the documents requested, if such documents exist, to requests Numbers 1 through 7." The requestor has asked for copies of, rather than access to, the first seven requested items. In addition, the requestor asks that the copies of the requested information be sent by first class mail and agrees to pay for the cost of postage and copying. The requestor may choose whether to inspect or to have access to requested information. *See* Gov't Code § 552.221. A requestor also has the right to require a governmental body to mail public information by first class United States mail if the requestor pays for the postage and all other applicable charges that the requestor has accrued under the Act. *See id.* § 552.221(b). The school district must therefore mail the copies of the requested information to the requestor upon receipt of payment for all costs.

The school district seeks to withhold from disclosure the eighth item, "[a]ny reports prepared by the Texas Association of School Boards during the calendar year 1999, related to salaries of District employees." You raise section 552.111 of the Government Code, which excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). An agency's policymaking function, however, does not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See id.* at 5-6; *see also Garland v. Dallas Morning News*, 969 S.W.2d 548 (Tex. App.-Dallas 1998, pet. granted.) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.-Houston [14<sup>th</sup> Dist.] 1996), writ denied) (documents relating to problems with specific employee do not relate to the making of new policy but merely implement existing policy). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* Section 552.111 may apply to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. *See* Open Records Decision No. 631 (1995).

You inform us that the school district has entered into a consulting agreement with the Texas Association of School Boards ("TASB"). Pursuant to this agreement, TASB agrees to conduct a study of the school district's current pay system and assist and advise the school district in developing a new pay system. You say that the information at issue, which is titled "Pay Plan Review and Updates," is a draft or working copy of TASB's proposal that is subject to significant changes and refinements as the study progresses.

We find that portions of the submitted information consist of the advice, opinion and recommendation of the school district's consultant. Further, we find that the school district's consultant was acting at the school district's request and performing a task within the school district's authority. We also find that a study of the school district's overall pay system concerns the school district's policymaking. We therefore conclude that portions of the information are excepted from disclosure based on section 552.111 of the Government Code.<sup>1</sup> However, portions of the information are not advice, opinion or recommendation, but rather, are factual. The school district may not withhold from disclosure these factual portions. We have marked the documents accordingly.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

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<sup>1</sup>We reach this conclusion because you indicate that the study is not completed. Under section 552.022 of the Government Code, had the study been completed, section 552.111 would not be applicable. Gov't Code § 552.022(1).

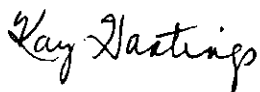
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/jc

Ref.: ID# 130371

encl. Submitted documents

cc: Mr. Bud Paulissen  
14607 Triple Crown Lane  
San Antonio, Texas 78248  
( w/o enclosures)